



The New "Alabama Code of Public Ethics"

When it comes to attracting new jobs to the State, the integrity of State government can be a critical factor. That's another reason why elected officials must be accountable, the process of government policy-making must be transparent, and State government must operate "above board" in every instance.

Alabama's ethics code is among the weakest in the nation. The Center for Public Integrity gives Alabama a "C" for its laws regarding financial disclosures by public officials and an "F" for lobbyist spending disclosure. In the Better Government Association's national index, Alabama ranks as the third worst state for the weakness of its laws relating to transparency, ethics, and accountability in government.

In Alabama, the wining and dining of elected officials is practically unlimited. Lobbyists don't have to report a dime they spend on entertaining an elected official unless the cost exceeds \$250 per day. That means a lobbyist can spend over \$91,000 per year on an elected official without reporting a thing. And he can spend even more than that, just so long as he reports it. The Ethics Code fails to expressly prohibit or even limit gifts and other benefits to an elected official unless there is a provable quid-pro-quo. In that respect, it doesn't prohibit anything that's not already outlawed by the state's bribery statute. Elected officials are capable of arranging consulting jobs with entities that receive public funds, such as grants or contracts, without even disclosing the existence of their contract. When a public official does violate the ethics code, **Alabama has the only Ethics Commission in the nation without the one tool absolutely critical to a thorough investigation – subpoena power.**

Each year, Governor Riley has proposed major ethics reform bills to strengthen certain aspects of the state's ethics laws. But invariably, those bills get lost in the shuffle of the legislative session. This year, he is taking a different approach. He is proposing the most sweeping overhaul of the state's ethics code since it was adopted in 1973. The new **Alabama Code of Public Ethics** will be a powerful check on the self interests of elected officials. **And in the wake of a series of embarrassing public corruption scandals, which have resulted in indictments and convictions, the new Code of Public Ethics will deter conflicts of interest and rebuild the people's trust in government and their elected officials.**

OVERVIEW

➤ **Public officials are *Public Servants***

As a symbolic measure, all references to public officials and public employees have been replaced with the term “public servants” to be a constant reminder that elected office and government employment are privileges that come with the duty of service—the duty to serve not our own self interests, but the best interests of the people.

➤ **Transparency and Accountability through *Full Disclosure***

- **Requires lobbyists to fully disclose to the Ethics Commission:**
 - Any and all gifts, meals, travel, tickets to sporting events, and other things of value provided to public servants and members of their household.
 - Any and all financial transactions between the lobbyist and public servants and their household members.
- **Requires lobbyists who lobby the executive branch for grants and contracts to register with the Ethics Commission.** (The current code already covers lobbying executive officials regarding action on legislation or regulations).
- **Requires public servants and their household members to disclose to the Ethics Commission:**
 - *All* jobs and consulting contracts they have with any business, nonprofit association, or other entity that they know or reasonably should know receives public funds, such as state grants and contracts.
 - *All* household income derived from any state or local government entity or institution, and all consulting contracts they or their business has with any government entity or institution. (Note: The Governor’s “End to Double Dipping Act,” if passed, would absolutely prohibit statewide elected officials and members of the Legislature from holding a second state job or a personal/professional services contract with a state agency/institution).
- **Requires the Ethics Commission to post on the Internet all lobbyist spending** on public servants and their household members, as well as all statements of economic interest and other required disclosures, searchable by the name of the public servant and the lobbyist.

➤ **An Independent Ethics Commission Empowered and Equipped to Combat Public Corruption**

- **Subpoena power.** “The commission may subpoena witnesses and compel their attendance, and may also require the production of books, papers, documents and other evidence.”
- **Post-investigation prosecution report required by Attorney General/district attorney:** “Within 180 days of receiving a case referred by the Commission, the Attorney General or the district attorney shall respond to the commission, in writing,” stating whether he or she intends to pursue the case or close it, and why.
- **Guaranteed appropriation.** To ensure the independence of the Commission, the bill contains a provision granting a guaranteed level of appropriation unless two-thirds of the members of both houses of the Legislature vote to reduce it.
- **Confirmation of Appointees.** The bill provides that appointees to the Ethics Commission will serve ad interim, and if the Senate fails to take action to confirm or reject them, they are automatically deemed to be confirmed.

MAJOR CHANGES TO ETHICS RULES

➤ **Overhauls the tortured definition of “thing of value”**

- Simplifies and broadens the term to ensure maximum coverage by the new Code
- Excludes only a few limited items in the interest of reasonableness and administrability, such as:
 - coffee and donuts served as modest refreshments other than as part of a meal
 - items of little intrinsic value, such as plaques, certificates, etc., intended solely for presentation
 - commercial loans on terms generally available to the public
 - commercial discounts and special rates available to the general public or to all government employees as a class
- **WHY?** To ensure that each and every **thing of value** that could give rise to an actual or apparent conflict of interest is *reported*, even if an exception (later in the Code) permits a public servant to accept it.

➤ **Closes the biggest loopholes in the old code – infinite gift-giving, special consideration for jobs and contracts, and unlimited wining and dining of public officials**

Today, the text of the Ethics Code contains gaping loopholes that allow public officials and employees to solicit and accept any gift, regardless of value, including a lucrative job or contract which may be offered solely because of their position of power, simply by avoiding a provable quid-pro-quo or obvious exertion of official influence.

- **The new Code overhauls the gift provisions to prohibit a public servant from soliciting or accepting, either directly or indirectly, any thing of value (1) from a “prohibited source” or (2) given because of the public servant’s official position.**
 - ◆ Modeled after the well-established rules of the U.S. Office of Government Ethics.
 - ◆ A “prohibited source” is defined as a lobbyist, contractor, or other person or business regulated by or seeking to do business with the public servant’s agency.
 - ◆ De minimis exception for gifts valued at \$25 or less per occasion (for example: promotional items, t-shirts, ball caps, etc.), with an aggregate limit of \$50 from any one person in a calendar year.
 - ◆ Other exceptions (See Commonly Encountered “Gift” Issues below).
- **WHY?** Because public service is a privilege and a public trust. To protect the processes and institutions of government from corrupting self-interests, public servants must not profit from their official positions.

➤ **Commonly Encountered Gift and Conflicts Issues**

Meals and Other Food and Beverages

Currently: No limits on the cost of meals provided to public officials/employees. Providers need only report spending in excess of \$250 per day for a public official's or public employee's meal.

New Code: Strict limitations and reporting requirements on meals provided by a "prohibited source"

- Total value of meals provided to a public servant and his or her household members on any one occasion may not exceed \$50 from all sources combined. Aggregate limit of \$200 per source per calendar year.
- Prohibited sources must report every dime they spend on any thing of value for a public servant and his or her household, including meals.

Attendance at Purely Social Events

Currently: Public officials and employees may accept unlimited hospitality in the form of food and beverages and lodging in the continental U.S. to attend purely social events, provided the hospitality does not extend beyond three days and is not continuous in nature. Providers need only report expenses in excess of \$250 per day.

New Code: Forbids a public servant to accept lodging to attend a purely social event, and food and beverages are limited and reportable according to the rules set out above for meals.

Football Tickets and Other Tickets or Admission to Sporting/Cultural Events

Currently: There is a wide-open exception for tickets to sporting and social events. Public officials and employees may accept unlimited, undisclosed tickets, unlimited hospitality in "luxury boxes" or "hospitality suites," and free lodging incidental to the event, if the event does not last longer than three days and is not continuous in nature. Providers need only report expenses in excess of \$250 per day.

New Code: Strict limitations and reporting requirements on athletic/cultural tickets and associated hospitality accepted by a public servant and his or her family members

- Forbids acceptance of lodging incidental to attendance at an athletic/cultural event.
- Requires full disclosure, for the first time ever, of each and every ticket given to a public servant and his or her household members, regardless of value.

- Guarantees citizens will be able to go online, search any provider and public servant by name, and retrieve a record showing exactly how many tickets (and other things of value) have been given to and accepted by the public servant.
- Subjects hospitality, which is frequently provided in “luxury boxes” or “hospitality suites,” to the same rules set out above for meals.
- Limits the time allowed to be spent at these events to 1 day rather than 3 days.

Travel Expenses

Currently: There are broad exceptions and gaping loopholes that allow public officials and employees to accept free transportation, lodging, unlimited meals, and entertainment in connection with so-called business trips, such as the exception for travel in conjunction with an “educational or informational purpose.” Providers need only report expenses in excess of \$250 per day.

New Code: Strict limitations and reporting requirements on official travel

- Requires that “educational or informational” trips have that as their “primary purpose” and also adds requirement that the trip be “substantially related” to the public servant’s official duties or in the interest of his or her agency.
- Subjects meals during business travel to the same rules as set out above for meals.
- Requires full disclosure of all spending on travel, transportation, lodging, meals, and associated hospitality/entertainment.

Jobs and Contracts with Government Agencies, Educational Institutions, and Businesses or Nonprofits that receive public funds

Currently: Some limitations

- Public officials may accept jobs and contracts with other public agencies and educational institutions, even if offered solely because of their official position, provided they do not personally “use or cause to be used [their] official position or office” to obtain the job/contract and provided it cannot be proven that the job or contract was given expressly “for the purpose of influencing official action.”
- Public officials and employees may enter into a contract paid for in whole or in part out of public funds if the contract is exempt from the competitive bid law, or is awarded through a process of competitive bidding and a copy is filed with the Ethics Commission.
- Certain public officials and employees and their household members must disclose in their statements of economic interest all sources of household income and the

name of each "business" from which the income is derived, but currently disclosures may be somewhat vague and ambiguous.

New Code: More restrictive limits and stringent disclosure requirements on public servants, their family members, and their businesses accepting jobs or contracts with other public entities or private entities that receive public funds.

- Forbids a public servant and his or her family member to accept any government job or contract (because it is a thing of value) offered *because of the public servant's official position (i.e. because of the status, authority, or duties associated with his or her office)*.
- Requires disclosure of any contract the public servant, his family members, or his business has which is paid for in whole or in part from public funds, regardless of whether the contract is subject to competitive bid requirements.
- Requires more specific disclosure of each individual state agency and educational institution which employs or contracts with a public official or a member of his or her household.
- Requires disclosure of employment or consulting contracts with any business, nonprofit association, or other entity which the public servant knows or reasonably should know receives public funds.